



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**COMMISSIONER OF INTERNAL
 REVENUE,**

Petitioner,

- versus -

**TeaM (PHILIPPINES)
 OPERATIONS CORPORATION
 [Formerly MIRANT
 (PHILIPPINES) OPERATIONS
 CORPORATION],**

Respondent.

G.R. No. 185728

Present:

SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, JJ.

Promulgated:

OCT 16 2013

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DECISION

VILLARAMA, JR., J.:

On appeal under Rule 45 is the August 27, 2008 Decision¹ of the Court of Tax Appeals (CTA) En Banc in C.T.A. E.B. No. 369 which affirmed the August 29, 2007 Decision² of the CTA First Division in CTA Case No. 6970 ordering petitioner Commissioner of Internal Revenue (CIR) to refund, or in the alternative, issue a tax credit certificate, in favor of respondent TeaM (Philippines) Operations Corporation³ the amount of ₱23,053,919.22 representing excess/unutilized creditable withholding taxes for the taxable year 2002. Petitioner likewise assails the November 28, 2008 Resolution⁴ of the CTA En Banc denying its motion for reconsideration from the assailed decision.

¹ *Rollo*, pp. 40-49. Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

² *Id.* at 100-110. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

³ Formerly Mirant (Philippines) Operations Corporation.

⁴ *Id.* at 51-54.

The facts as summarized in the assailed CTA En Banc decision are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including inter alia, the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent, on the other hand, is duly licensed to do business in the Philippines and is primarily engaged in the business of designing, construction, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuel provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporations or other entity engaged in the development, supply or distribution of energy.

Respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation [formerly Southern Energy Quezon, Inc.] or (MPagC) and Mirant Sual Corporation [formerly Southern Energy Pangasinan, Inc.] or (MSC) to provide these corporations with maintenance and management services in connection with the operation, construction and commissioning of the coal-fired power stations situated in Pagbilao, Province of Quezon and Sual, Province of Pangasinan, respectively. Payments received by respondent for the operating and management services rendered to MPagC and MSC were allegedly subjected to creditable withholding tax.

On April 15, 2003, respondent filed with the Bureau of Internal Revenue (BIR) its original Annual Income Tax Return (ITR) for the calendar year ended December 31, 2002 declaring zero taxable income and unutilized tax credits of P23,108,689.00, detailed as follows:

Gross Income	P 82,732,818.00
Add: Non-operating & Other Income	<u>172,834.00</u>
Total Gross Income	P 82,905,652.00
Less: Deductions	<u>82,905,652.00</u>
Taxable Income	P NIL
Tax Rate	<u>32%</u>
Minimum Corporate Income Tax (MCIT)	<u>P 1,658,113.00</u>
Income Tax Due	<u>P 1,658,113.00</u>
Less: Prior Years' Excess Credits	NIL
Tax Payments for 1 st 3 Quarters	NIL
Creditable Tax Withheld for 1 st 3 Quarters	<u>P 24,766,802.00</u>
Total Tax Credits/Payments	<u>P 24,766,802.00</u>
Tax Overpayment	<u>(P 23,108,689.00)</u>

In its ITR for the year 2002, respondent indicated its option to refund its alleged excess creditable withholding tax when it marked "X" the box corresponding to the option "To be refunded" under line 30 of said ITR.

On March 17, 2004, respondent filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount

of P23,108,689.00, allegedly representing overpaid income tax or excess creditable withholding tax for calendar year ended December 31, 2002.

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997 was about to lapse without action on the part of petitioner, respondent elevated its case before the Court in Division by way of Petition for Review on April 27, 2004, docketed as C.T.A. Case No. 6970.⁵

On August 29, 2007, the CTA First Division rendered a Decision⁶ partially granting respondent's petition and ordered petitioner to refund or issue a tax credit certificate in the reduced amount of ₱23,053,919.22 representing excess/unutilized creditable withholding taxes for the taxable year 2002. The CTA First Division found that respondent complied with the substantiation requirements for it to be entitled to a claim of excess/unutilized tax credits for the said taxable year. It observed that respondent presented Certificates of Creditable Tax Withheld at Source issued to it by Mirant Pagbilao Corporation (MPagC) and Mirant Sual Corporation (MSC) for the year 2002 and which were found by the court-commissioned auditing firm, SGV & Co., to be faithful reproductions of the original copies of the certificates, duly signed and prepared under the penalties of perjury and are presumed to be true and correct.

The CTA in Division, however, disallowed the amount of ₱54,769.78 from the amount claimed since respondent's Annual Income Tax Return only reflected an income of ₱247,120,318.00 although the income upon which taxes were withheld amounted to ₱247,668,015.80. Thus, the tax that corresponds to the difference of ₱547,697.80 was deducted from the tax claim because the income upon which it was withheld did not form part of the income as declared in respondent's 2002 ITR.

Petitioner filed a motion for partial reconsideration from the aforementioned decision but the motion was denied by the CTA First Division in a Resolution⁷ dated February 4, 2008.

Petitioner appealed the decision of the CTA First Division to the CTA En Banc raising the sole issue of whether respondent is entitled to the refund of excess or unutilized creditable withholding taxes for the taxable year 2002 in the amount of ₱23,053,919.22.

On August 27, 2008, the CTA En Banc denied the petition for lack of merit and affirmed the ruling of the CTA First Division granting respondent's claim for refund or issuance of tax credit certificate in the amount of ₱23,053,919.22.

⁵ Id. at 41-43.

⁶ Supra note 2.

⁷ Id. at 118-120.

Petitioner's motion for reconsideration from the foregoing ruling was denied in a Resolution⁸ dated November 28, 2008.

Hence, petitioner filed the present petition insisting that--

RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS FOR REFUND OF CREDITABLE WITHHOLDING TAX.⁹

Petitioner CIR argues that the withholding of the subject taxes had not been duly proven by respondent. Petitioner posits that in order that the claim for refund of creditable withholding tax will be granted, the claimant must present an authentic certificate of creditable withholding tax. Petitioner points out that the original copies of the subject withholding tax certificates were not presented by respondent before the CTA. It only presented the testimony of the court-commissioned independent accountant (ICPA), Mr. Henry Tan, who merely identified the certificates and opined that said certificates were faithful reproductions of the original. Thus, petitioner claims that she was deprived of the opportunity to scrutinize the certificates to determine their authenticity.

Petitioner also assails the CTA En Banc's ruling brushing aside the fact that mere photocopies were presented and holding that the documents were executed under the penalties of perjury pursuant to Section 267 of the National Internal Revenue Code of 1997. According to petitioner, even if the documents presented were executed under the penalties of perjury, it does not guarantee that the same were not perjured and does not dispense with the best evidence rule. She claims that the competent witness who can prove the truth of the contents of the certificates is the person who prepared the same.

In its Comment/Opposition,¹⁰ respondent maintains that it had presented the original copies of the withholding tax certificates to the court-commissioned ICPA for examination under the procedures laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97. Respondent avers that the original copies of those certificates were among the voluminous documents submitted by respondent for examination by the court-commissioned ICPA. Respondent asserts that under the aforementioned circulars, the duly commissioned ICPA was authorized to examine the original copies of the certificates, make photocopies thereof, and certify that the photocopies are faithful reproductions of the original. It contends that the original copies of the certificates need not be presented in court after the court-commissioned ICPA has submitted his report together with all the supporting documents and testified on his findings and conclusions. Respondent submits that it is enough that those certificates were properly pre-marked, introduced as evidence and made available to petitioner in case she wants to verify their authenticity.

⁸ Supra note 4.

⁹ Id. at 29.

¹⁰ Id. at 147-153.

In reply,¹¹ petitioner stresses that the presentation of Mr. Henry Tan, the court-commissioned ICPA, who identified the withholding tax certificates and testified that said certificates were faithful reproductions of the original, does not satisfy the requirements and conditions for tax refund. Petitioner adds that tax refunds, like tax exemptions are construed strictly against the taxpayer and a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding.

The main issue to be resolved in this petition is whether respondent has complied with the requirements for refund or issuance of tax credit certificate of creditable withholding taxes for calendar year ended December 31, 2002.

We affirm the ruling of the CTA En Banc that respondent has complied with the requirements for refund of creditable withholding taxes and is therefore entitled to the ₱23,053,919.22 claim for refund or issuance of tax credit certificate.

A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:

- 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
- 2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and
- 3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.¹²

The first requirement is based on Section 229 of the National Internal Revenue Code of 1997 which provides that:

SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

¹¹ Id. at 205-211.

¹² *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417, 424, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 36-37 (2007).

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied.)

The second and third conditions are specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), which provides:

Section 10. *Claims for tax credit or refund.* – (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only **when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom** xxx.¹³ (Emphasis supplied.)

There is no dispute that respondent has complied with the first requirement when it filed its administrative claim for tax refund on March 17, 2004 and thereafter filed a petition for review with the CTA on April 27, 2004 or within two years from April 15, 2003, the date of filing of its Annual Income Tax Return.¹⁴ Respondent was also able to prove the second requirement by showing in its ITR that the income upon which the creditable withholding taxes were paid was declared as part of its gross income for the taxable year 2002.

As to the third condition, both the CTA First Division and the CTA En Banc ruled that respondent has sufficiently established the fact of withholding by presenting the Certificates of Creditable Tax Withheld at Source issued by MPagC and MSC for the year 2002. We find no cogent reason to deviate from these findings. Oft-repeated is the rule that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.¹⁵ After a thorough review of the case, we find no abuse or improvident exercise of authority on the part of the CTA in granting respondent's claim for tax refund.

In the present case, petitioner insists that the fact of withholding had not been established since the original copies of the Certificates of Creditable Tax Withheld at Source were not submitted to the CTA and that the payors or withholding agents or the persons who prepared and executed

¹³ As cited in *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, id. at 425 and *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, id. at 37.

¹⁴ Exhibit "D".

¹⁵ *Commissioner of Internal Revenue v. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011, 640 SCRA 189, 200.

the Certificates of Creditable Tax Withheld at Source were not presented to prove the authenticity of the certificates.

Petitioner's contention fails to persuade us. It should be stressed that respondent presented the original copies of the Certificates of Creditable Tax Withheld at Source to the court-commissioned ICPA who examined the original copies and certified that the copies submitted to the CTA as evidence were faithful reproductions of the original certificates. Said procedure was in accordance with Rule 13 of the Revised Rules of the Court of Tax Appeals which provides, to wit:

SEC. 2. Duties of independent CPA. – The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

- (a) Examination and verification of receipts, invoices, vouchers and other long accounts;
- (b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;
- (c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid;
- (d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;
- (e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;
- (f) Testifying on such formal report; and
- (g) Performing such other functions as the Court may direct. (Underscoring supplied.)

Pursuant to the foregoing provision, respondent presented the pre-marked copies of the Certificates of Creditable Tax Withheld at Source (Exhibits "G", "H", "I" and "J") issued by MPagC and MSC for the year 2002 together with other pertinent documents and which was identified and verified by the court-commissioned ICPA to be faithful reproductions of the original documents which it had examined and scrutinized. In the succeeding section, Section 3 of the same rule, it was provided that the submission by the independent CPA of pre-marked documentary evidence shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA.

After the pre-marked certificates and other documentary evidence are submitted by respondent to the CTA, respondent's counsel manifested that the original copies of the documents are available at the respondent's office in

case petitioner wants to verify the existence of the original documents.¹⁶ However, petitioner never signified any intention to verify the authenticity of the withholding tax certificates. It did not interpose any objection when the certificates were formally offered in court as part of respondent's evidence. Petitioner made no effort to examine the original certificates to determine its authenticity and to ascertain that the photocopies are faithful reproductions by comparing it with the original copies. Hence, it cannot now claim that it was deprived of the opportunity to examine and scrutinize the certificates and other documents submitted by respondent. There was nothing in the records which would cast doubt on the authenticity of the certificates.

Thus, we are in accord with the findings of the CTA First Division and the CTA En Banc that respondent complied with the substantiation requirements for refund of creditable withholding tax. Here, respondent was able to establish the fact of withholding by submitting a copy of the withholding tax certificates duly issued by MPagC and MSC, as the withholding agent, indicating the name of the payor and showing the income payment basis of the tax withheld and the amount of the tax withheld. Contrary to petitioner's assertion, it is not necessary for the person who executed and prepared the Certificates of Creditable Tax Withheld at Source to be presented and to testify personally as to the authenticity of the certificates. The copies of the Certificates of Creditable Tax Withheld at Source when found by the duly commissioned ICPA to be faithful reproductions of the original copies would suffice to establish the fact of withholding. This was our ruling in the case of *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*,¹⁷ where this Court had agreed with the conclusion of the CTA En Banc stating that

Contrary to petitioner CIR's contention, **the fact of withholding was likewise established through respondent's presentation of the Certificates of Creditable Tax Withheld At Source, duly issued to it by Southern Energy Pangasinan, Inc. and Southern Energy Quezon, Inc., for the year 2000 x x x. These certificates were found by the duly commissioned independent CPA to be faithful reproductions of the original copies, as per his Supplementary Report dated March 24, 2003 x x x.** (Emphasis supplied.)

As shown in the certificates, respondent's creditable withholding tax amounted ₱24,766,801.58, broken down as follows:

Exh.	Period Covered	Withholding Agent	Income Amount	Tax Rate	Tax Withheld
H	Jan. 2002 to Mar. 2002	Mirant Sual Corporation	81,694,812.20	10%	8,169,481.22
J	April 2002 to June 2002	Mirant Sual Corporation	32,835,093.20	10%	3,283,509.32
G	Jan. 2002 to March 2002	Mirant Pagbilao Corporation	132,590,415.80	10%	13,259,041.58

¹⁶ TSN, May 18, 2006, p. 17.

¹⁷ G.R. Nos. 171742 & 176165, June 15, 2011, 652 SCRA 80, 98.

I	April 2002 to June 2002	Mirant Pagbilao Corporation	547,694.60	10%	54,769.46
			247,668,015.80		24,766,801.58

However, its 2002 ITR reflected only the amount of ₱247,120,318 out of the total income of ₱247,668,015.80 or a difference of ₱547,697.80. Thus, the tax that corresponds to the said amount (₱54,769) was properly disallowed by the CTA First Division and CTA En Banc in the determination of respondent's tax claim since the income upon which it was withheld did not form part of the income declared in the 2002 ITR.

In fine, we find no reason to reverse or modify the findings of the CTA En Banc which granted respondent's claim for tax refund in the amount of ₱23,053,919.22.


WHEREFORE, the present petition for review on certiorari is **DENIED**. The Decision dated August 27, 2008 and Resolution dated November 28, 2008 of the Court of Tax Appeals En Banc in C.T.A. E.B. No. 369 are hereby **AFFIRMED and UPHELD**.

No pronouncement as to costs.

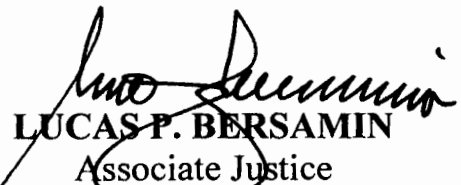
SO ORDERED.



MARTIN S. VILLARAMA, JR.
 Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
 Chief Justice
 Chairperson

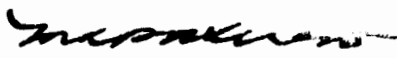

TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

